



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov
DPM Oct-08

BERRY & ASSOCIATES P.C.
9255 SUNSET BOULEVARD
SUITE 810
LOS ANGELES CA 90069

COPY MAILED

OCT 06 2008

OFFICE OF PETITIONS

In re Application of	:	
Cortopassi et al.	:	DECISION ON PETITION
Application Number: 10/672382	:	TO WITHDRAW HOLDING OF
Filing Date: 09/25/2003	:	ABANDONMENT
Attorney Docket Number: PALM-	:	
2936.PSI.CON	:	

This is a decision on the "LETTER REQUESTING WITHDRAWAL OF IMPROPER NOTICE OF ABANDONMENT UNDER MPEP 711.03 AND 37 C.F.R. §1.137," filed on September 16, 2008, which is treated as a petition to withdraw the holding of abandonment in the above-identified application.

The application was held abandoned for failure to timely submit a reply to the final Office action mailed on February 20, 2008, which set a three (3) month shortened statutory period for reply. Notice of Abandonment was mailed on August 26, 2008.

Petitioners assert that a response to the final Office action was in fact timely filed. In support, petitioners have provided a copy of a postcard bearing an Office-date stamp of August 25, 2008, itemizing the filing of, *inter alia*, a petition for extension of time, a Request for Continued Examination (RCE), and a preliminary amendment. A copy of the reply asserted to have been timely filed was also provided with the subject petition.

A review of the Official file reveals that the papers filed on August 25, 2008, are located therein.

The date-stamped on the post card of August 25, 2008, is after the due date for the response. However, under 37 C.F.R. § 1.8(a)(1) correspondence is considered timely if: (1) the correspondence is mailed or transmitted prior to expiration of the set period for response by being properly addressed to the Patent and Trademark Office as set out in 37 C.F.R. § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail or transmitted to the Patent and Trademark

Office in accordance with 37 C.F.R. § 1.6(d); and (2) the correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

The RCE Transmittal sheet contains a Certificate of Mailing dated August 20, 2008, signed by petitioner's counsel, Reena Kuyper. The transmittal sheet itemizes the filing of the RCE and the preliminary amendment as the submission under 37 CFR 1.114, and contains a general authorization to charge all fees to counsel's deposit account, in compliance with the requirements of 37 C.F.R. § 1.8(a)(1) as set forth above.

Accordingly the showing of record is that a reply was timely filed. Therefore, there is no abandonment in fact. The holding of abandonment is withdrawn, and the Notice of Abandonment is vacated.

This matter is being referred to Technology Center Art Unit 2624 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions